

STATE OF MONTANA VENDOR CONTRACT

Department of Administration
State Procurement Bureau
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V.C. #: COR09-1682R

Title: ELECTRONIC MONITORING FOR THE DEPT. OF CORRECTIONS

CONTRACT TERM	FROM	April 13, 2009	CONTRACT STATUS	NEW (XX)
	TO	April 12, 2011		RENEW ()
VENDOR ADDRESS	B.I. INCORPORATED 6400 LOOKOUT ROAD BOULDER, CO 80301		ORDER ADDRESS	
ATTN:	LAURENT LEPOUTRE		ATTN:	
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PRICES: Per Section 4.1

DELIVERY: Per Contract

F.O.B.: Per Agency Request

TERMS: Net 30 Days

REMARKS:

RFP NO: 09-1682R

Rhonda R. Grandy
Rhonda R. Grandy, Contracts Officer

Date:

3/31/09

AUTHORIZED SIGNATURE

ELECTRONIC MONITORING FOR THE DEPARTMENT OF CORRECTIONS
COR09-1682R

1. PARTIES

THIS CONTRACT is entered into by and between the Montana Department of Corrections, (hereinafter referred to as "the State"), whose address is 1539 11th Avenue, Helena, MT, 59620 and B.I. Incorporated, (hereinafter referred to as the "Contractor"), whose address and phone number are 6400 Lookout Road, Boulder, CO 80301 and (800) 241-2911.

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1 Contract Term. This contract shall take effect on April 13, 2009 and shall terminate on April 12, 2011 unless terminated earlier in accordance with the terms of this contract. (Section 18-4-313, MCA).

2.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of ten (10) years.

3. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State with Electronic Monitoring equipment and services in accordance with the requirements listed in Request for Proposal (RFP)09-1682R and Contractors' response to RFP09-1682R.

Further, it is the intent of the State that this contract will fulfill a need for a statewide electronic monitoring system that will monitor, check, and verify a person's presence or absence at a specified location during specified time periods, and will report unauthorized absences, late returns, equipment malfunctions, and tampering to the Contractor's monitoring center. The electronic monitoring system shall provide 24/7/365 monitoring and utilizes a web-based interface that can be accessed by authorized users around the state. The electronic monitoring system offered by the Contractor shall include all necessary hardware, software, licensing, installation, maintenance, repair, and training and shall be modified by the Contractor, as necessary, to meet the requirements of this contract. All hardware, software, and licensing must comply with State of Montana, Information Technology (IT) standards.

The minimum performance and design requirements of the electronic monitoring equipment and supporting services (as identified in the RFP) are listed below.

3.1 MONITORING HARDWARE

3.1.1 Transmitter (Worn by Offender)

3.1.1.1 The transmitter is compliant with all applicable Federal Communications Commission rules and regulations.

3.1.1.2 The transmitter is shock resistant, water proof, and will function reliably under normal, everyday wear.

3.1.1.3 The transmitter and band is hypoallergenic.

- 3.1.1.4 The transmitter is small, lightweight, and easily installed on the offender's ankle or wrist with minimal training and experience of the installer.
- 3.1.1.5 The transmitter is field programmable.
- 3.1.1.6 The transmitter is battery-powered and has a one (1) year minimum continuous operating life without the need for battery recharging or replacement.
- 3.1.1.7 The transmitter will send an individually coded signal that has a maximum range of 150 feet. The range can be adjusted to 35 feet, 75 feet, or 150 feet.
- 3.1.1.8 The transmitter shall immediately notify the monitoring center in the event of any tamper or strap severing.

3.1.2 Home Unit

- 3.1.2.1 The home unit complies with all applicable FCC Part 15 and 68 regulations.
- 3.1.2.2 The home unit is attached to the participant's telephone and telephone outlet using standard RJ11-C modular telephone connector jack or plug.
- 3.1.2.3 The home unit is powered by 110 volt AC line current, with an internal battery back-up providing a minimum of 12 hours of continuous operating power.
- 3.1.2.4 The home unit does not pose any health or safety hazard to the participant or others.
- 3.1.2.5 The home unit is reliable in all types of residences, including those with metal siding and/or a metal roof. The home unit is reliable near common household furnishings such as appliances, mirrors, and other electrical devices.
- 3.1.2.6 The home unit is designed to handle power surges through both the telephone line and power connector.
- 3.1.2.7 The home unit shall seize a telephone line (when not in use) and deliver a courtesy alert when the telephone line is in use, in order to initiate communications with the monitoring center.
- 3.1.2.8 The home unit shall store and time stamp data in the event that the telephone communication with the monitoring center is disrupted.
- 3.1.2.9 The home unit shall accept and activate reporting activities only from the unique signal of the corresponding transmitter attached to that one participant.
- 3.1.2.10 The home unit shall receive the radio signal from the participant's transmitter at a distance of 150 feet without undue obstruction from metallic objects or interference from household electronic equipment.
- 3.1.2.11 Every 14.5 to 29 seconds (22 seconds on average), the HomeGuard transmitter randomly emits a radio frequency signal. By design, this random variation virtually eliminates spoofing or duplication of the transmitter signal. The HomeGuard transmitter has more than 1,000,000 possible identification codes, ensuring that each code is unique to the client to whom the transmitter is attached. Additionally, the transmitter's signal is emitted in very short bursts that incorporate frequency shift-keyed (FSK) modulation. By combining this proprietary coding encryption scheme with the unique RF

frequency, it is virtually impossible to simulate or duplicate the transmitter's signal. BI guarantees no duplication of radio signals with another client's transmitter.

3.1.2.12 The home unit shall detect the following events and immediately communicate the action to the monitoring center – including the time of occurrence:

- Arrival of transmitter within range of the home unit
- Departure of transmitter out of range of the home unit
- Cutting or removal of transmitter attachment strap from the participant
- Loss and restoration of 110 AC power
- Tampering with the home unit including attempts to gain unauthorized access to the internal mechanism
- Disconnection and restoration of telephone service (disconnection is communicated as soon as service is restored)
- Attempts to simulate or duplicate the radio signal by a device other than the participant's own transmitter

3.1.2.13 The home unit shall automatically communicate with the monitoring center at preset intervals (determined by MDOC) – not to exceed four (4) hours, if no participant activity is detected.

3.1.3 Drive-by Unit

3.1.3.1 The drive-by unit complies with all applicable Federal Communications Commission rules and regulations.

3.1.3.2 The drive-by unit is a lightweight receiver used to detect the presence of transmitters.

3.1.3.3 The drive-by unit has an effective monitoring range of 500 feet.

3.1.3.4 The drive-by unit shall store up to 250 transmitter events with detailed information that includes date/time transmission was received, transmitter class/type, identification number, battery status, and tamper status.

3.1.3.5 Information stored in the drive-by unit can be downloaded to a computer by the officer.

3.1.3.6 The drive-by unit includes a case, a 110 AC charger, and a car charger.

3.1.4 Alcohol Monitor

3.1.4.1 The alcohol monitor complies with all applicable FCC Part 15 and 68 regulations.

3.1.4.2 The alcohol monitor is attached to the participant's telephone and telephone outlet using standard RJ11-C modular telephone connector jack or plug.

3.1.4.3 The alcohol monitor is powered by 110 volt AC line current, with an internal battery backup of 12 hours of continuous operating power, including two alcohol tests.

3.1.4.4 The alcohol monitor does not pose any health or safety hazard to the participant or others.

- 3.1.4.5 The alcohol monitor shall handle power surges through both the telephone line and power connector.
- 3.1.4.6 The alcohol monitor shall seize a telephone line (when not in use) and deliver a courtesy alert when the telephone line is in use, in order to initiate communications with the monitoring center.
- 3.1.4.7 The alcohol monitor shall store and time stamp data in the event that the telephone communication with the monitoring center is disrupted.
- 3.1.4.8 The alcohol monitor can be used to administer “deep lung” tests.
- 3.1.4.9 The alcohol monitor shall measure the presence of alcohol only. The alcohol monitor shall not respond to natural gas or acetone.
- 3.1.4.10 The alcohol monitor shall verify the identity of the person taking the breath alcohol test.
- 3.1.4.11 The alcohol monitor will produce numerical results that have an accurate and direct correlation with blood alcohol levels.
- 3.1.4.12 The alcohol monitor allows testing to be administered as follows:
- Randomly, as generated by the computer, within a time window specified by MDOC
 - By authorized MDOC staff
 - “On-demand” by MDOC

3.1.5 Maintenance, Repair, and Service

- 3.1.5.1 The contractor shall maintain all equipment and spares in good operating condition and will provide prompt repair, replacement, and service. In the event of equipment failure, the contractor shall replace said equipment within 72 hours of initial notification. MDOC will not incur any charges for this service.
- 3.1.5.2 At no cost to MDOC, the contractor will provide MDOC offices with additional (spare) transmitters and home units equal to 20% of MDOC total in-use equipment. The 20% will be determined based on a quarterly average and is in addition to a 5% allowance for lost and damaged equipment. This additional equipment will be distributed to each regional office based on their total in-use equipment.
- 3.1.5.3 The contractor shall provide remote service and diagnostics [of all equipment in MDOC possession] from its monitoring center. This service shall be provided 24 hours a day, seven days a week, 365 (366, as appropriate) days per year.
- 3.1.5.4 The contractor shall provide MDOC with a toll free telephone number to contact the monitoring center.

3.2 MONITORING CENTER

3.2.1 Technology

- 3.2.1.1 The contractor's monitoring center shall be staffed 24 hours a day, seven days a week, all year long.
- 3.2.1.2 The contractor shall maintain the monitoring center at a secure location where access to the monitoring center and all stored records contained therein are restricted to only authorized individuals.
- 3.2.1.3 The monitoring center shall continuously receive and retain all information sent by each receiver/dialer, together with the date and time of each occurrence.
- 3.2.1.4 The monitoring center must record and/or log all telephone conversations between the monitoring center and participants or officers. The contractor must advise all persons called or calling that the telephone call will be recorded and/or logged. Recorded calls will be stored for a minimum of five (5) years. Contractor must deliver all stored call records/logs [related to this contract] to MDOC when requested by MDOC.
- 3.2.1.5 The central monitoring computer automatically sends violation notifications by email, text message, or page, as frequently as necessary. The system can send one or multiple notifications simultaneously. In addition, with GuardWare on the Web, users can customize alert notification at the agency, officer, and offender levels. Prior to the start of the program, BI's Monitoring Customer Service (MCS) Department will work with the agency in order to enter default settings for events, alerts, and notification methods. If the agency wishes to update these default notification parameters at any point throughout the contract, MCS will make any necessary changes.
- 3.2.1.6 The system must store records and data for a minimum of five (5) years. All records and data shall be the property of MDOC. Contractor must deliver all records and data to MDOC when requested by MDOC.
- 3.2.1.7 Maximum response time for emergency calls shall not exceed 15 minutes. Maximum response time for non-emergency calls shall not exceed 12 hours.
- 3.2.1.8 The contractor shall maintain a process for expunging an offender's record from their system.

3.2.2 Client Capacity

- 3.2.2.1 The contractor will have monitoring transactions the monitoring center can handle simultaneously.

3.2.3 Support

- 3.2.3.1 The contractor's technical support staff must speak fluent English without an accent that would make it difficult for the average person to comprehend.
- 3.2.3.2 The contractor's staff shall be fully trained and able to answer technical questions concerning contractor's equipment.

3.2.4 Key Events

- 3.2.4.1 The contractor must notify the designated officer within 15 minutes or less if any of the following key events occur:
- Unauthorized absences from the residence by an offender.

- Failure of an offender to return to their residence at a predetermined time after a scheduled absence.
- Late arrivals, early departures from residence by an offender.
- Equipment malfunctions.
- Tampering with equipment.
- Loss of electrical power or telephone service at the residence of an offender.
- Missed calls from a home unit.

3.2.5 Notification

3.2.5.1 The contractor shall maintain a notification policy for offender violations that allows the officer to establish distinct levels of security on an offender by offender basis. The notification policy will include email, alphanumeric paging, and next day reports to the Officer.

3.2.5.2 The monitoring center shall maintain a log of all notifications that are made to MDOC officers.

3.2.6 Disaster Recovery

3.2.6.1 The contractor shall maintain a disaster recovery plan as stated in their RP response.

3.2.6.2 The contractor shall maintain a dual, redundant system as stated in their RFP response.

3.3 INTERNET INFORMATION EXCHANGE

3.3.1 System Requirements

3.3.1.1 The contractor shall maintain a web-based interface that is Internet Explorer 6 and 7 compatible. The interface shall use SSL to establish an encrypted link between the web server and the officer's web browser to ensure all data passed between the two remain private.

3.3.1.2 The contractor shall maintain data backup and restoration procedures in case of hardware or software failure.

3.3.1.3 The contractor shall maintain all licensing for the requested installation in order to meet the requirements listed herein.

3.3.1.4 The contractor's web site will be accessed by multiple MDOC users at the same time and any multiple user restrictions.

3.3.1.5 The contractor shall allow MDOC Officers to order additional equipment on-line.

3.3.1.6 The contractor's system shall track and log all access activity by MDOC staff and contractor shall provide reports of all staff use, as requested.

3.3.2 Reports

3.3.2.1 The system shall allow MDOC staff to produce ad hoc reports.

3.3.2.2 The system shall automatically provide [MDOC specified] monthly reports, by

region, to each Regional Administrator. The system shall also provide a monthly overview report to a designated MDOC manager.

3.3.3 Scheduling

3.3.3.1 The contractor's system shall allow MDOC to use an exception schedule. The schedule shall allow for week-by-week scheduling for a minimum for two weeks in advance. The system shall allow a schedule to be copied from week-to-week.

3.3.4 Security

3.3.4.1 The contractor's system contains a password administration tool that does not require the same authority as full user administration. Passwords shall conform to State of Montana policy which requires a minimum of six characters - including at least one uppercase and one number. In addition, passwords must force change once every sixty (60) days and not allow re-use of that password for seven cycles.

3.3.4.2 The system shall contain securable access levels that will allow strict control of the system features that individual users can access.

3.3.4.3 The system administrator shall add/remove officers from the system.

3.3.4.4 The system shall maintain the ability to set inactivity time-outs to log the user out after a certain period of inactivity.

3.3.4.5 The system must allow auditing capabilities of all security events.

3.4 TRAINING

The contractor shall provide on-site training at four (4) separate regional Probation & Parole offices (Missoula, Helena, Great Falls, and Billings) and a separate training at a later time in Kalispell.

3.4.1 The training shall address installation and operation of the transmitter and home unit.

3.4.2 The training shall address operation and use of the application software.

3.4.3 The contractor must supply training materials to the officers during the initial training.

3.4.4 Training must be completed within two weeks of contract signing.

3.4.5 The contractor shall provide MDOC with a follow-up training plan that includes a training of MDOC officers hired after the initial training period. The training plan will include a six month check to ensure MDOC officers understand all aspects of the monitoring equipment.

4. CONSIDERATION/PAYMENT

4.1 Payment Schedule. In consideration for the Electronic Monitoring services to be provided, the State shall compensate Contractor for equipment and services according to the following schedule:

- **Electronic Monitoring with a HomeGuard 200 Unit - \$2.49 per Day** [includes HomeGuard 200 rental (\$1.40) and monitoring (\$1.09)].
- **Alcohol Monitoring with a Sobriator Unit - \$2.85 per Day** [includes Sobriator rental (\$1.71) and monitoring (\$1.14)].
- **Drive-by Unit - per Day: No Charge.**

- **Software/Web Access:** No Charge
- **Follow up Training:** No Charge.

Pricing for all technologies listed above includes a 20% shelf allowance, and a 5% lost and damage allowance per year, as requested in the RFP. Pricing for this contract includes a 20% spare level, based on twenty percent of MDOC's total in-use equipment based on a quarterly average, at no additional cost to MDOC; and 5% allowance for lost and damaged equipment. BI understands that additional equipment will be distributed to each regional office's total in-use equipment.

The cost for spares in excess of 20% allowance is \$1.40 per day for HomeGuard 200 Electronic Monitoring unit and \$1.71 per day for the alcohol monitoring Sobrietor unit. Replacement costs for lost units in excess of the 5% allowance are \$700.00 for the HomeGuard 200 electronic monitoring base, \$400.00 for the HomeGuard 200 Electronic Monitoring transmitter, and \$1,300.00 for the Sobrietor Alcohol Monitoring unit.

4.2 Withholding of Payment. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

5. ACCESS AND RETENTION OF RECORDS

5.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Section 18-1-118, MCA)

5.2 Retention Period. The Contractor agrees to create and retain records supporting the (insert services rendered or supplies provided) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

6. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Section 18-4-141, MCA) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

7. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

8. LIMITATION OF LIABILITY

Except for damages caused by injury to persons or tangible property, or related to defending intellectual property provided under the contract, the Contractor's liability for contract damages is limited to direct damages.

9. **REQUIRED INSURANCE**

9.1 General Requirements. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

9.2 Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

9.3 Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain claims made coverage under the following conditions: (1) the commencement date of this contract must not fall outside the effective date of insurance coverage and that commencement date will be within the retroactive date for insurance coverage in future years, and (2) if the "claims made" policy is cancelled or terminated, Contractor must purchase a 3-year tail for claims that are made (filed) after the termination or expiration of the contract. Contractor represents that its insurance meets the above conditions. The above coverage must provide combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

9.4 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

9.5 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, 125 North Roberts, Room 165 Mitchell Building, Helena, Montana, 59620. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

10. **COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, 125 North Roberts, Room 165 Mitchell Building, Helena, Montana, 59620 upon expiration.

11. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

12. INTELLECTUAL PROPERTY/OWNERSHIP

12.1 Mutual Use. All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use and authorize others to use, copyrightable property created under this contract including all deliverables and other materials, products, modifications developed or prepared for the State by Contractor under this contract or any program code, including site related program code, created, developed, or prepared by Contractor under or in support of the performance of its obligations hereunder, including manuals, training materials, and documentation (the "work product").

12.2 Title and Ownership Rights. The State shall retain title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "content"), but grants Contractor the right to access and use content for the purpose of complying with its obligations under this contract and any applicable statement of work.

12.3 Ownership of Work Product. Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any work product.

12.4 Copy of Work Product. Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term or at the expiration or termination of all or part of Contractor's performance hereunder, a current copy of all work product in the form and on the media in use as of the date of the State's request, or as of such expiration or termination, as the case may be.

12.5 Ownership of Contractor Information. Techniques, subroutines, algorithms, and methods or rights thereto owned by Contractor at the time this contract is executed and employed by Contractor in connection with the services provided to the State (the "contractor information") shall be and remain the property of Contractor. The Contractor must provide full disclosure of any contractor information to the State prior to its use and prove its ownership. Contractor grants to the State a perpetual, irrevocable, royalty-free, unrestricted right to use, modify, transfer, and maintain the contractor information. Except as otherwise provided for in Section 13.3 or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware provided by Contractor.

13. PATENT AND COPYRIGHT PROTECTION

13.1 Third-Party Claim. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages, and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

13.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes noninfringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

14. CONTRACT OVERSIGHT

14.1 CIO Oversight. The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or the issuance of a stop work order.

14.2 Right to Assurance. If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this contract, the State may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the State's option, be the basis for terminating the contract under the terms and conditions or other rights and remedies available by law or provided by the contract.

14.3 Stop Work Order. The State may, at any time, by written order to the Contractor, require the Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

15. CONTRACT TERMINATION

15.1 Termination for Cause. The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform the contract pursuant to Section 16, Event of Breach – Remedies.

15.2 Bankruptcy or Receivership. Voluntary or involuntary Bankruptcy or receivership by Contractor may be cause for termination.

15.3 Noncompliance with Department of Administration Requirements. The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract signing.

15.4 Reduction of Funding. The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (See section 18-4-313(4), MCA.).

16. EVENT OF BREACH – REMEDIES

16.1 Event of Breach. Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- a. products or services furnished by the Contractor fail to conform to any requirement of the contract; or
- b. failure to submit any report required by this contract; or
- c. failure to perform any of the other covenants and conditions of the contract, including beginning work under this contract without prior Department of Administration approval.

16.2 State's Actions in Event of Breach. Upon the occurrence of any event of breach, the State may take any one, or more, or all, of the following actions:

- a. give the Contractor a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater or lesser specification of time, 30 days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the Contractor notice of termination;
- b. give the Contractor a written notice specifying the event of breach and suspending all payments to be made under this contract and ordering that the portion of the contract price, which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the event of breach, shall never be paid to the Contractor;
- c. set off against any other obligation the State may owe to the Contractor any damages the State suffers by reason of any event of breach; or
- d. treat the contract as materially breached and pursue any of its remedies at law or in equity, or both.

17. WAIVER OF BREACH

No failure by the State to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other breach on the part of the Contractor.

18. STATE PERSONNEL

18.1 State Contract Manager. The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints, or any other issues regarding the contract should be directed to the State Contract Manager.

The State Contract Manager for this contract is:

Gary Willems
1539 11th Avenue
Helena, MT 59620
Phone: (406) 444-4941
Fax: (406) 444-9818
gwillems@mt.gov

18.2 State Project Manager. The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:

Mike Aldrich
1539 11th Avenue
Helena, MT 59620
(Phone): (406) 444-1538
Fax: (406) 444-7909
maldrich@mt.gov

19. CONTRACTOR PERSONNEL

19.1 Identification/Substitution of Personnel. The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of the contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under the contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

19.2 Contractor Contract Manager. The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager, State Project Manager, and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

Laurent Lepoutre
6400 Lookout Rd.
Boulder, CO 80301
303.218.1133
Cell: 720.320.7759
Fax: 303.218.1461
laurent.lepoutre@bi.com

20. MEETINGS AND REPORTS

20.1 Technical or Contractual Problems. The Contractor is required to meet with the State's personnel, or designated representatives, at no additional cost to the State, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the State. Failure to participate in problem resolution meetings or failure to make a good faith effort to resolve problems may result in termination of the contract.

20.2 Progress Meetings. During the term of the contract, the State's Project Manager will plan and schedule progress meetings with the Contractor to discuss the progress made by the Contractor and the State in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of

the contract as required. At each such meeting, the Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under the contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

20.3 Failure to Notify. In the event Contractor fails to specify in writing any problem or circumstance with respect to the period during the term covered by Contractor's status report, it shall be conclusively presumed for purposes of this contract that no such problem or circumstance arose during such period, and Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for either claiming it is entitled to receive any amount (including, without limitation, damages or additional charges arising out of a breach by the State of any State obligation) with respect to any of Contractor's obligations hereunder in excess of those previously agreed to; or failing to complete any of Contractor's obligations hereunder. Submission by Contractor of the status reports shall not alter, amend, or modify Contractor's or the State's rights or obligations pursuant to any provision of this Contract.

20.4 State's Failure or Delay. For a problem or circumstance identified in the Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

21. CONTRACTOR PERFORMANCE ASSESSMENTS

21.1 Assessments. The State may do assessments of the Contractor's performance. Contractors will have an opportunity to respond to assessments, and independent verification of the assessment may be utilized in the case of disagreement.

21.2 Record. Completed assessments may be kept on record at ITSD and may serve as past performance data. Past performance data will be available to assist agencies in the selection of IT service providers for future projects. Past performance data may also be utilized in future procurement efforts.

22. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

23. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See section 18-1-401, MCA)

24. SCOPE, AMENDMENT, AND INTERPRETATION

24.1 Contract. This contract consists of seventeen (17) numbered pages and any Attachments referenced herein, the Contractor's response to RFP #09-1682R, as amended, and RFP #09-1682R, as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor, the order of precedence of document interpretation is in the same order.

24.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

25. **EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

DEPARTMENT OF CORRECTIONS

B.I. INCORPORATED
6400 LOOKOUT ROAD
BOULDER, CO 80301
FED I.D.#84-0769926


BY: 
Pam Bunke, Administrator

BY: 
Michael E. Hankerd, Corporate Controller

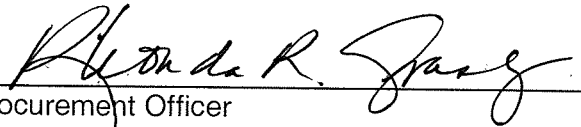
DATE: 4-9-09

DATE: 4-3-09

Approved as to Legal Content:

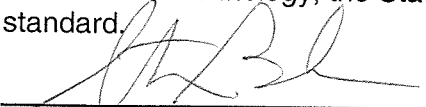
 3/31/09
Legal Counsel (Date)

Approved as to Form:

 3/31/09
Procurement Officer (Date)
State Procurement Bureau

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

 3/31/09
Dick Clark, Chief Information Officer (Date)
Department of Administration